

WHEREAS, on November 19, 2019, and on March 20, 2020, Petitioner filed motions for

relief from his judgment. 13 Crim. 31., ECF No. 453, 455; 19 Civ. 9889, ECF No. 8, 9;

WHEREAS, on April 29, 2020, Petitioner filed a request to file a second or successive habeas motion along with a co-Defendant. 13 Crim. 31, ECF No. 457;

WHEREAS, motions filed pro se are given “special solicitude” and are construed to raise the strongest possible argument. *See Komatsu v. City of New York*, 18 Civ. 3698, 2019 WL 4805904, at *3 (S.D.N.Y. Sept. 30, 2019) (quoting *Hardaway v. Hartford Pub. Works Dep't*, 879 F.3d 486, 489 (2d Cir. 2018)). Nonetheless, pro se applications must still comply with the statutory requirements. *See Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 477 (2d Cir. 2006) (internal quotation omitted) (“*pro se* status does not exempt a party from compliance with relevant rules of procedural and substantive law”); *accord Roy v. Law Offices of B. Alan Seidler, P.C.*, 284 F. Supp. 3d 454, 457 (S.D.N.Y. 2018) (same);

WHEREAS, “[a] subsequent petition is ‘second or successive’ when it raises a claim that was, or could have been, raised in an earlier petition.” *Cosey v. Lilley*, 368 F. Supp. 3d 671, 674 (S.D.N.Y. 2019) (quoting *James v. Walsh*, 308 F.3d 162, 167 (2d Cir. 2002)). Before a second or successive § 2255 motion is filed in the district court, authorization from the appropriate court of appeals is required. 28 U.S.C. § 2244(b)(3)(A);

WHEREAS, the motions that Petitioner has filed all address the same topics: (1) that his counsel was constitutionally ineffective due to advice relating to whether to take a plea agreement; (2) that the trial court abused its discretion based on the sentencing decision; and (3) that the prosecution violated his constitutional rights. Petitioner could have raised these claims in an earlier petition. In fact, his Petition that the Second Circuit already reviewed raised a similar claim relating to his sentencing. *See* 13 Crim. 31, ECF No. 446. It is hereby

ORDERED that, in the interest of justice, the Court construes the motion at 13 Crim. 31,

ECF No. 440 as a second or successive habeas motion and transfers this motion to the United States Court of Appeals for the Second Circuit. *See* 28 U.S.C. § 1631; *see also Liriano v. United States*, 95 F.3d 119, 122-23 (2d Cir. 1996). If the Court of Appeals authorizes Petitioner to proceed in this matter, he shall move to reopen this case under this civil docket number. It is further

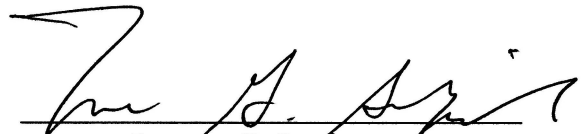
ORDERED that the Petitioner's other submissions are also construed as second or successive Section 2255 petitions, and all are denied as both procedurally improper and redundant with the motion being transferred.

As none of Petitioner's motions make a substantial showing of a denial of constitutional rights, a certificate of appealability will not issue. *See* 28 U.S.C. § 2253.

The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this order would not be taken in good faith and therefore *in forma pauperis* status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

The Clerk of Court is respectfully directed to close docket numbers 434, 435, 440, 446, 453, 455 and 457 in 13 Crim. 31, and also to close docket numbers 8 and 9 in 19 Civ. 9889. The Clerk of Court is respectfully directed to close 19 Civ. 9889.

Dated: May 26, 2020
New York, New York


LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE